

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |                                     |  |   |  |
|---|---|-------------------------------------|--|---|--|
| Investigator:<br>Adrian Legaspi                   | Team:<br>Team # 4   | CCRB Case #:<br>201210680           | <input type="checkbox"/> Force                         | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|   |   |                                     | <input checked="" type="checkbox"/> Abuse              | <input checked="" type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Saturday, 08/11/2012 10:20 PM | Location of Incident:<br>Grand Concourse and East 178th Street;<br>en route to the 46th Precinct Stationhouse | Precinct:<br>46                     | 18 Mo. SOL<br>2/11/2014                                | EO SOL<br>2/11/2014                           |  |
| Date/Time CV Reported<br>Thu, 08/16/2012 10:17 AM | CV Reported At:<br>CCRB   | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Thu, 08/16/2012 10:17 AM |   |  |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)        | Shield | TaxID  | Command |
|---------------------------|--------|--------|---------|
| 1. POM Christophe Vaccaro | 03957  | 947671 | 046 PCT |
| 2. POM Primitivo Montanez | 28882  | 939058 | 046 PCT |

| Officer(s)               | Allegation  | Investigator Recommendation |
|--------------------------|---|-----------------------------|
| A.POM Primitivo Montanez | Off. Language: PO Primitivo Montanez made remarks to § 87(2)(b) based upon religion in the vicinity of Grand Concourse and East 178th Street, in the Bronx. |                             |
| B.POM Primitivo Montanez | Discourtesy: PO Primitivo Montanez spoke discourteously to § 87(2)(b) in the vicinity of Grand Concourse and East 178th Street, in the Bronx.               |                             |
| C.POM Christophe Vaccaro | Abuse: PO Christopher Vaccaro threatened § 87(2)(b) with the use of force en route to the 46th Precinct Stationhouse.                                       |                             |
| § 87(4-b) § 87(2)(g)     |   |                             |

### Case Summary

On August 16, 2012, § 87(2)(b) filed a complaint with the CCRB via the on-line website (encl. 8-14).

On August 11, 2012, at approximately 10:20 p.m., PO Primitivo Montanez and PO Christopher Vaccaro, assigned to the 46<sup>th</sup> Precinct, approached and subsequently arrested § 87(2)(b) in the vicinity of Grand Concourse and East 178<sup>th</sup> Street, in the Bronx. At the aforementioned location, and en route to the 46<sup>th</sup> Precinct Stationhouse, the following allegations resulted:

- **Allegation A- Offensive Language: PO Primitivo Montanez made remarks to § 87(2)(b) based upon religion in the vicinity of Grand Concourse and East 178<sup>th</sup> Street, in Bronx.**

§ 87(2)(g)

- **Allegation B-Discourtesy: PO Primitivo Montanez spoke discourteously to § 87(2)(b) in the vicinity of Grand Concourse and East 178<sup>th</sup> Street, in the Bronx.**

§ 87(2)(g)

- **Allegation C-Abuse of Authority: PO Christopher Vaccaro threatened § 87(2)(b) with the use of force en route to the 46<sup>th</sup> Precinct Stationhouse.**

§ 87(2)(g)

- § 87(4-b) § 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) old white male. He stands 5'8" tall, weighs 130 pounds, and has brown hair and blue eyes. § 87(2)(b)

#### **Arrest Photo**

§ 87(2)(b)'s arrest photo, taken on August 11, 2012, § 87(2)(g) shows no visible injuries on his face (encl.33a).

#### **On-line Complaint** (encl.8-14)

On August 16, 2012, § 87(2)(b) filed his complaint via the on-line website. His complaint is copied as follows:

“Without provocation or probable cause did said officer harass and assault § 87(2)(b) after

being asked for directions. While handcuffed said officer or his partner relieved § 87(2)(b) of personal belongings that went missing between the arrest area and the police station. These lost articles include 1- I-pod {Apple}, 2 rings {Jostens Navy ring, initial ring made for victim by his grandfather}, personal medications, one of which was necessary for § 87(2)(b) to take that night. Said named officer refused to read the victim his rights and openly lied about the entire incident in his report. The officer then threatened the victim with retaliation if the victim reported them or opened his mouth to anyone. These officers acted like a pair of bullies and no less than a pair of domestic urban terrorists.

After spending the afternoon in Rockaway Queens I was returning to my home in the Bronx. I took the A train to 145th Street where I changed for the D train where I rode to Tremont Ave. After departing the train station I went to find the 36 bus when I asked a pair of officers in a van for directions. This enraged them as they then proceeded to ruin [sic] me over with their van. After trying to get away from getting hit by the van {I took three rather large steps} the police officers exited the van and manhandled me. I was cuffed and processed incorrectly. I NEVER had my rights read to me at ANY time during this ordeal.”

**CCRB Statement** (encl.16-20)

§ 87(2)(b) provided an official statement to the CCRB on August 29, 2012. § 87(2)(g)

On August 11, 2012, at 10:20 p.m., in the vicinity of Grand Concourse and East 180<sup>th</sup> Street in the Bronx, § 87(2)(b) exited a subway station. He was leaving a friend’s house in Far Rockaway where he had planned to relax, drink a few beers, and smoke a marijuana cigarette with his friend. He did not smoke any marijuana at his friend’s house, and had consumed one beer. He was not intoxicated or high. § 87(2)(b) has poor eyesight and it was dark outside, therefore he became disoriented after exiting the subway. He lit a tobacco cigarette and began smoking it as he walked southbound on Grand Concourse.

At East 175<sup>th</sup> Street he realized he was going the wrong way. He crossed Grand Concourse and began walking northbound. § 87(2)(b) noticed two uniformed officers sitting in a dark unmarked van parked on Grand Concourse. § 87(2)(b) identified them from his arrest report as PO Primitivo Montanez and PO Christopher Vaccaro, both assigned to the 46<sup>th</sup> Precinct. Approximately 20 to 30 yards before approaching the van, § 87(2)(b) finished his cigarette and tossed it on the ground. § 87(2)(b) asked PO Montanez, who was sitting in the passenger’s side of the vehicle for directions to the D train. § 87(2)(b) described PO Montanez as a uniformed light-skinned Hispanic male, approximately 5’8” tall, with a medium build, black curly hair, wearing a silver badge, and in his mid to late 20s. PO Montanez gave § 87(2)(b) directions.

§ 87(2)(b) turned around and took two steps in the opposite direction of the van. He heard a loud screeching sound behind him and a male voice shouting, “Hey you! Hey!” Before § 87(2)(b) could turn around PO Montanez and PO Vaccaro grabbed his shoulder and arms and threw him against the van. § 87(2)(b) described PO Vaccaro as a uniformed white male, approximately 6’0” tall, with a medium build, blond curly hair, wearing a silver badge, and in his mid to late 20s.

PO Vaccaro pushed § 87(2)(b) closer against the van after § 87(2)(b)’s body made contact with the van. His lower right torso and his forehead made contact with the van. § 87(2)(b) sustained a bruise on his head and pain in his torso. § 87(2)(b) asked both officers why they were doing this. Both officers told him to shut up. Both officers told him to put his hands on the van. He complied. PO Montanez then grabbed his right arm and PO Vaccaro grabbed his left arm. Both officers pulled his arms behind his back and one of them handcuffed him. § 87(2)(b) was not resisting.

§ 87(2)(b) let his arms go limp and allowed the officers to place him in handcuffs. § 87(2)(g)

§ 87(2)(b) did not know which one handcuffed him because he was facing the van. Both officers searched § 87(2)(b) and went into his pockets. In his telephone statement (encl. 15), § 87(2)(b) stated that only one officer searched him. He also stated that at this point, he asked the officers why he had been stopped, and both officers replied that he was being arrested for smoking marijuana in public.

They removed tissues, over-the-counter allergy medication, his wallet, an open pack of cigarettes, an unopened pack of cigarettes, a keychain with keys and various religious ornaments on it, two iPods, and \$45 in cash. One of the officers, § 87(2)(b) does not remember which, looked in the open packet of cigarettes and found two marijuana cigarettes.

PO Montanez went through § 87(2)(b)'s wallet. Inside of § 87(2)(b)'s wallet was a prayer card with the image of Jesus, and various other Christian religious items. Attached to his keychain was a finger rosary and smaller crucifixes and rosaries. PO Montanez asked § 87(2)(b) what religion he was. § 87(2)(b) told him that he was Roman Catholic. PO Montanez said, "I guess you like to fuck little boys." In his telephone statement, § 87(2)(b) did not recall which officers said this and alleged that the same officer also said, "Your God ain't gonna help you now," and threw a crucifix on the ground. PO Montanez then told § 87(2)(b) to get in the "fucking van." § 87(2)(b) went in the back of the van.

§ 87(2)(b) continued to ask why he was stopped and searched. PO Montanez said, "We don't gotta tell you shit, you little faggot." § 87(2)(b) continued to ask why he was being apprehended. As they were driving to the 46<sup>th</sup> Precinct Stationhouse, PO Vaccaro told § 87(2)(b) "Either you shut up, or we pull over and beat the shit out of you and say you resisted arrest." § 87(2)(b) did not allege this in his telephone statement. At the precinct, § 87(2)(b)'s property was vouchered. § 87(2)(b) was arrested for § 87(2)(a) 160.50. His criminal case was adjourned in contemplation of dismissal.

### **NYPD Statements:**

#### **Subject Officer: PO PRIMITIVO MONTANEZ**

- PO Primitivo Montanez is a § 87(2)(b) old, Hispanic male standing 5'6" tall, weighing 210 pounds, with black hair and brown eyes.
- On August 11, 2012, PO Montanez worked from 7:30 p.m., until 4:05 a.m. on August 12, 2012, he was assigned to 46<sup>th</sup> Precinct conditions unit. PO Montanez was in uniform, and working with PO Vaccaro. He was assigned to a black unmarked van, RMP number 8386.

#### **Memo Book**

"21:35 one under in front of East 178<sup>th</sup> and Grand Concourse. § 87(2)(a) 160.50 (encl.21-23).

#### **Online Booking Sheet and Complaint Report**

According to the Online Booking Sheet and Complaint Report, on August 11, 2012, "§ 87(2)(a) 160.50" There is no notation that force was used to effect the arrest. He was charged with § 87(2)(a) 160.50. (encl. 24-25b).

#### **CCRB Statement**

PO Montanez was interviewed at the CCRB on September 21, 2012. (encl. 26-27)

On August 11, 2012, at approximately 10:20 p.m., in the vicinity of East 180<sup>th</sup> Street and Grand Concourse, in the Bronx, PO Montanez was on patrol with his partner PO Vaccaro in a

black unmarked van. PO Montanez was the operator and PO Vaccaro was the recorder. PO Montanez was driving southbound on the Grand Concourse. He was approximately five to ten feet away from the curb of Grand Concourse, when he observed § 87(2)(b) with a lit marijuana cigarette in his right hand. PO Vaccaro also observed that § 87(2)(b) was holding a lit marijuana cigarette. PO Montanez determined that § 87(2)(b) was smoking a marijuana cigarette, as opposed to a tobacco cigarette, based on its shape, distinct odor, and his experience and training in recognizing narcotics. PO Montanez did not observe any other civilians in § 87(2)(b)'s vicinity.

PO Montanez asked § 87(2)(b) what was in his hand. § 87(2)(b) did not respond. PO Montanez parked the van, exited, and plucked the lit marijuana cigarette out of § 87(2)(b)'s hand. PO Vaccaro accompanied PO Montanez. PO Montanez did not make additional physical contact with § 87(2)(b). PO Montanez told § 87(2)(b) to put hands behind back, and he complied. PO Montanez handcuffed § 87(2)(b). He was calm and he did not resist arrest. § 87(2)(b) was calm and compliant throughout the rest of the arrest.

PO Montanez frisked § 87(2)(b) for weapons at the scene. No contraband was recovered. PO Montanez did not search § 87(2)(b)'s pockets at the scene. § 87(2)(b) was placed in the van, and PO Montanez began to drive to the 46<sup>th</sup> Precinct Stationhouse. During the arrest, neither PO Montanez nor PO Vaccaro threw § 87(2)(b) against the vehicle. Neither PO Vaccaro nor PO Montanez had any conversation with § 87(2)(b) while in the van.

PO Montanez never referenced § 87(2)(b)'s religion. PO Montanez never made reference to § 87(2)(b)'s sexuality. PO Montanez never used any profanity with § 87(2)(b) nor did he hear PO Vaccaro use any profanity with § 87(2)(b). PO Montanez never threatened to “beat the shit,” out of § 87(2)(b). PO Montanez never heard PO Vaccaro, threaten to “beat the shit,” out of § 87(2)(b). PO Montanez never referenced sexually molesting boys, and he never heard PO Vaccaro reference sexually molesting boys.

**Subject Officer: PO CHRISTOPHER VACCARO**

- *PO Christopher Vaccaro is a § 87(2)(b) old white male standing 6’4” tall, weighing 225 pounds, with brown hair and blue eyes.*
- *On August 11, 2012, PO Vaccaro was working in uniform with PO Montanez. PO Vaccaro was working from 19:30 on August 11, 2012, until 04:05 on August 12, 2012. They were assigned to 46<sup>th</sup> Precinct Conditions operating out of an unmarked van 8396*

**Memo Book** (encl.28-29).

PO Vaccaro has no entries in his memo book regarding this incident.

**CCRB Statement**

PO Vaccaro was interviewed at the CCRB on February 26, 2013 (encl. 30-31).

On August 11, 2012, at approximately 10:20 p.m., in the vicinity of East 180<sup>th</sup> Street and Grand Concourse, in the Bronx, PO Vaccaro was driving southbound on Grand Concourse. PO Primitivo Montanez was also in the vehicle. PO Vaccaro cannot recall if he was driving or sitting in the passenger’s seat.

While driving southbound on the Grand Concourse § 87(2)(b) was observed smoking a lit marijuana cigarette. § 87(2)(b) was walking southbound on Grand Concourse. PO Vaccaro cannot recall if he observed § 87(2)(b) first, or if PO Montanez observed § 87(2)(b) and then informed PO Vaccaro. PO Vaccaro knew that § 87(2)(b) was not smoking a tobacco cigarette based on the fact that the marijuana cigarette in § 87(2)(b)'s hand burned differently than a regular cigarette, had a different odor, and a different shape.

PO Vaccaro described the marijuana cigarette as being approximately six inches in

length, with a slightly tannish color, and a distinct odor of marijuana that both PO Vaccaro and PO Montanez could smell in their vehicle, despite the fact that the windows were closed. PO Vaccaro later amended his statement to reflect that he was unsure if the windows were closed or slightly opened. The vehicle was approximately 15 feet away from § 87(2)(b). Whoever was driving the vehicle parked it alongside the curb.

Both PO Montanez and PO Vaccaro exited the vehicle and approached § 87(2)(b) and asked him how he was doing. PO Vaccaro could not recall what § 87(2)(b) said in response. As the approached § 87(2)(b) the odor of marijuana became stronger. § 87(2)(b) was pleasant in his demeanor. Either PO Montanez or PO Vaccaro informed § 87(2)(b) that he was under arrest for smoking marijuana in public and § 87(2)(b) stated that he understood.

PO Vaccaro does not recall who placed § 87(2)(b) in handcuffs. § 87(2)(b) complied with being placed in handcuffs. PO Vaccaro believes that § 87(2)(b) was compliant and pleasant during the entire interaction. In the process of arresting § 87(2)(b) neither officer ever used any physical force.

Neither officer pushed § 87(2)(b) against their vehicle. § 87(2)(b) never complained of being in pain. § 87(2)(b) was searched incident to lawful arrest, but PO Vaccaro did not recall if any contraband was recovered. PO Vaccaro believed that later on, possibly at the stationhouse, some more marijuana was recovered. PO Vaccaro never recalls removing § 87(2)(b)'s wallet. Neither PO Vaccaro nor PO Montanez ever referenced § 87(2)(b)'s religion. Neither PO Vaccaro nor PO Montanez used any profanity with § 87(2)(b). Neither officer ever referenced § 87(2)(b)'s sexuality or sexually molesting boys. Neither officer ever threatened to “beat the shit” out of § 87(2)(b). § 87(2)(b) was transported to the 46<sup>th</sup> Precinct Stationhouse for arrest processing. Neither officer spoke with § 87(2)(b) while driving to the stationhouse.

### **NYPD Document**

#### **Property Clerk Invoice**

The property clerk invoice notes that one burnt marijuana cigarette, field tested positive for marijuana, as well as two alleged marijuana cigarettes were recovered from § 87(2)(b) (encl. 32-33).

#### **Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

#### **Status of Civil Proceedings**

- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York claiming physical injuries, defamation of character, physiological injuries, loss of reputation, economic injuries, loss of earnings, defamation of character, mental anguish, shame, humiliation, indignity, and damage to reputation. He is claiming \$10,000,000.00 as compensation (encl. 34-35).

#### **Civilian's Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian's CCRB History (encl.7)

- § 87(2)(b) has filed the following CCRB complaints:

- § 87(2)(b)

### Subject Officers' CCRB History

- PO Primitivo Montanez has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 6).
- PO Christopher Vaccaro has been a member of the service for four years and there are two substantiated CCRB allegations against him. (encl. 5).
  - In case #201103088, allegations of stop and frisk were substantiated and charges were recommended. There are no dispositions as of March 15, 2013.

### Conclusion

### Identification of Subject Officers

Both PO Montanez and PO Vaccaro acknowledged interacting with § 87(2)(b)

### Allegations Not Pled

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Investigative Findings and Recommendations

#### **Allegation A- Offensive Language: PO Primitivo Montanez made offensive remarks to § 87(2)(b) in the vicinity of Grand Concourse and East 178<sup>th</sup> Street, in the Bronx.**

§ 87(2)(b) alleged that both officers, in the process of searching him, recovered various pieces of Roman Catholic religious iconography, including prayer cards with the images of the Virgin Mary and Jesus Christ, as well as a crucifix, and a rosary. Allegedly, PO Montanez then asked him about his faith and subsequently made offensive comments about Roman Catholicism.

However, in his initial on-line complaint (encl. 8-14), § 87(2)(b) does not make any such allegation. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) In his phone statement, he alleged that PO Montanez threw a crucifix on the ground, and that an officer later implied that because he was Roman Catholic, he was a pedophile. In his phone statement, he did not recall which officer made the offensive remarks.

§ 87(2)(g)

§ 87(2)(b) the alleged comment equating Roman Catholicism with pedophilia remained consistent in both § 87(2)(b)'s phone statement (encl.15) and his official CCRB statement (encl.16-20). Both officers denied ever discovering § 87(2)(b)'s religion or referencing his religion at any point during the arrest. Furthermore, both officers deny ever using any profanity with § 87(2)(b) whatsoever. PO Montanez explicitly denied ever implying that § 87(2)(b) liked to “fuck little boys,” because he was a Roman Catholic, nor did PO Vaccaro hear PO Montanez make any statement of that kind.

§ 87(2)(b) also alleged that PO Montanez called him a “faggot,” after § 87(2)(b) requested to know why he was being stopped. § 87(2)(b) did not mention this allegation in his first two statements to the CCRB. Furthermore, both officers deny ever saying this word to § 87(2)(b) or at any point referencing § 87(2)(b)'s sexuality or sexual preferences.

Both officers deny ever referencing § 87(2)(b)'s faith or making offensive comments about Roman Catholicism in general. § 87(2)(g)

**Allegation B- Discourtesy: PO Primitivo Montanez spoke discourteously to § 87(2)(b) in the vicinity of Grand Concourse and East 178<sup>th</sup> Street, in the Bronx.**

**Allegation C-Abuse of Authority: PO Christopher Vaccaro threatened § 87(2)(b) with the use of force en route to the 46<sup>th</sup> Precinct Stationhouse.**

§ 87(2)(b) alleged that at the scene, PO Montanez told him to get in the “fucking van.” Also en route to the 46<sup>th</sup> Precinct Stationhouse, PO Vaccaro threatened to, “beat the shit” out of § 87(2)(b) if he continued to ask why he was stopped. These allegations were only mentioned in his in-person statement, even though § 87(2)(b) alleged in his on-line complaint that the officers threatened to use force against him. PO Montanez denied using any profanity when speaking with § 87(2)(b) and PO Vaccaro stated that he did not hear PO Montanez do so. PO Vaccaro denied ever threatening § 87(2)(b) and PO Montanez denied ever hearing PO Vaccaro threaten § 87(2)(b).

Furthermore, both officers characterized § 87(2)(b) as pleasant and calm throughout the incident precluding both the need to use force, or the need to threaten force. § 87(2)(g)

§ 87(4-b) § 87(2)(g)



Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date